

INFORMATION

The Law and Sterilization

WE HAVE received numerous requests for advice concerning sterilization procedures on both male and female patients. An understanding of the present legal basis for these procedures is helpful.

In California, there are two code provisions specifically relating to sterilization, Section 6624 of the Welfare and Institutions Code and Section 645 of the Penal Code. Section 6624 of the Welfare and Institutions Code permits the State Department of Mental Hygiene to cause sterilization of any person who has been lawfully committed or admitted to a state hospital or home, based on inheritable mental diseases, mental deficiency, or marked departures from normal mentality. Section 645 of the Penal Code provides for the sterilization of any person adjudged guilty of carnal abuse of a female under ten years of age. The procedure in such cases is authorized by the state according to eugenic sterilization statutes which must be strictly observed.

In California, there is no statute expressly granting or denying the right to perform or have performed a sterilization operation outside of state institutions. However, in line with the general consensus of opinion, the California courts would most likely hold that an operation to produce sterility when necessary for therapeutic reasons, may lawfully be performed, provided, of course, a proper consent is obtained. A California case (*Danielson v. Roche*, 109 Cal. App. 2d 832) which involved the removal of diseased Fallopian tubes in connection with the performance of an appendectomy, indicates that our courts recognize the legality of performing a sterilization operation for therapeutic purposes. The case of *Kritzer v. Citron*, 101 Cal. App. 2d 33, is to the same effect.

It would be reasonable to conclude that if a physician should become involved in a legal action arising out of an operation for sterilization of a woman, the California courts would look with favor upon the performance of the procedure, provided it was performed on solid medical grounds. As to the exact therapeutic indications that must be present to justify a sterilization operation, guideposts cannot be given, except that any physical condition which would endanger the wife's chances of surviving childbirth is undoubtedly sufficient grounds for the operation. However, as a protection to himself, consultation and approval with one or more other physicians should be obtained.

It is, of course, important to obtain the consent of the husband and wife for the performance of a sterilization operation based upon solid medical grounds. In this respect care must be taken to advise the patient that these procedures are not always successful and to avoid any language which may imply a guarantee of success. Along this line the validity of a consent to an operation that is not required for any therapeutic reason is doubtful. Further, in California, the performance of a salpingectomy or vasectomy without therapeutic indication could constitute the crime of mayhem. Until the law is settled, it is our opinion that a physician should not perform a sterilization operation except when it is therapeutically indicated or in accordance with a statute.

Specifically, economic necessities and the mental condition of the patient would not, under the present status of the law, support the performance of a sterilization procedure. The performance of surgery for sterilization under such circumstances, in my opinion, could subject the physicians involved to either civil or criminal liability or both. However, I have not found any cases instituted against physicians charging mayhem for the performance of a sterilization operation.

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